

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Implementation of the Subscriber Carrier)
Selection Changes Provisions of the) CC Docket No. 94-129/
Telecommunications Act of 1996)
)
Zone Telecom, Inc.)
Petition for Waiver)
)

ORDER

Adopted: August 31, 2000

Released: September 1, 2000

By the Associate Chief, Accounting Policy Division, Common Carrier Bureau:

I. INTRODUCTION AND BACKGROUND

1. In its *Carrier Change Orders*,¹ the Commission adopted rules applicable to carriers changing a consumer's preferred carrier.² In this Order, we grant Zone Telecom, Inc. (Zone) a limited waiver of the authorization and verification requirements of the Commission's rules and *Carrier Change Orders*.³ We grant this limited waiver to the extent necessary to

¹ *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996 and Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Further Notice of Proposed Rule Making and Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 10674 (1997), Second Report and Order and Further Notice of Proposed Rule Making, 14 FCC Rcd 1508 (1998) (*Section 258 Order*); *stayed in part*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. May 18, 1999); *First Order on Reconsideration*, FCC 00-135 (released May 3, 2000), 65 Fed. Reg. 47678 (August 3, 2000); *stay lifted*, *MCI WorldCom v. FCC*, No. 99-1125 (D.C. Cir. June 27, 2000); Third Report and Order and Second Order on Reconsideration, FCC 00-255 (released August 15, 2000); *reconsideration pending*; *Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Report and Order, 10 FCC Rcd 9560 (1995), *stayed in part*, 11 FCC Rcd 856 (1995); *Policies and Rules Concerning Changing Long Distance Carriers*, CC Docket No. 91-64, 7 FCC Rcd 1038 (1992), *reconsideration denied*, 8 FCC Rcd 3215 (1993) (*PIC Change Recon. Order*); Investigation of Access and Divestiture Related Tariffs, CC Docket No. 83-1145, Phase I, 101 F.C.C.2d 911 (*Allocation Order*), 101 F.C.C.2d 935 (*Waiver Order*), *reconsideration denied*, 102 F.C.C.2d 503 (1985) (*Reconsideration Order*) (the *Reconsideration Order* denied reconsideration of both the *Allocation Order* and the *Waiver Order*). We refer to these orders collectively as the *Carrier Change Orders*.

² 47 C.F.R. §§ 64.1100 - 64.1190.

³ On August 7, 2000, Zone filed an Emergency Petition for Waiver relating to Zone's acquisition of the interLATA subscriber base of The Furst Group, Inc. (TFG) (Waiver Petition). On August 9, 2000, Zone filed a Supplement to its Waiver Petition, which included a draft of its post-transfer customer notification letter (Supplement).

enable Zone to become the preferred carrier of the consumers currently presubscribed to TFG, without first obtaining the consumers' authorization and verification.

2. Section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telephone exchange service or telephone toll service except in accordance with such procedures as the Commission shall prescribe."⁴ The goal of section 258 is to eliminate the practice of "slamming," the unauthorized change of a subscriber's preferred carrier. Pursuant to section 258, carriers are absolutely barred from changing a customer's preferred local or long distance carrier without first complying with the Commission's verification procedures.⁵ In the *Section 258 Order*, the Commission revised its procedures to ensure that carriers obtain the requisite authority prior to changing a customer's preferred carrier. The Commission requires that carriers follow one of the Commission's prescribed verification procedures before submitting carrier changes on behalf of consumers.⁶

3. Zone seeks a waiver of our verification rules to allow Zone to be designated the preferred long distance carrier for the customers of TFG without first obtaining each customer's authorization and verification. Because we conclude that, under the circumstances presented, it is in the public interest to grant the waiver, we grant Zone a waiver, subject to the conditions represented in its filings.

II. DISCUSSION

4. Generally, the Commission's rules may be waived for good cause shown.⁷ As noted by the Court of Appeals for the D.C. Circuit, however, agency rules are presumed valid.⁸ The Commission may exercise its discretion to waive a rule where the particular facts make strict compliance inconsistent with the public interest.⁹ In addition, the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on

⁴ 47 U.S.C. § 258.

⁵ The Commission's rules and orders clearly contemplate that a switchless reseller may be a customer's preferred carrier. Therefore, changes to a customer's preferred carrier that do not involve a change in the customer's underlying facilities-based carrier are nonetheless subject to the Commission's authorization and verification rules. See *Section 258 Order* at paras. 145-146; *WATS International Corp. v. Group Long Distance (USA), Inc.*, 12 FCC Rcd 1743, 1752 (1997) (citing *PIC Change Recon. Order*, 8 FCC Rcd at 3218).

⁶ Pursuant to these procedures, a carrier must: (1) obtain the subscriber's written authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order. See 47 C.F.R. § 64.1150.

⁷ 47 C.F.R. § 1.3.

⁸ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

an individual basis.¹⁰ Waiver of the Commission's rules is therefore appropriate only if special circumstances warrant a deviation from the general rule, and such a deviation will serve the public interest.¹¹

5. We find that Zone has demonstrated that good cause exists to justify a limited waiver of the Commission's authorization and verification requirements to the extent necessary to enable Zone to transfer to its own customer base the affected TFG customers. Zone is a subsidiary of e-Kong Group Limited (e-Kong Group), a Hong Kong-based Internet and telecommunications company that, through affiliates, offers resold international telecommunications services in Hong Kong and Singapore. Zone intends to provide facilities-based and resold international, interstate, and intrastate interexchange services in the United States. TFG, a financially troubled company, is a provider of resold international, interstate, and intrastate interexchange services in the United States. In the Waiver Petition, Zone states that it has entered into an agreement with TFG to acquire selected assets, including the customer base of TFG.¹² Upon discontinuance of service by TFG, Zone will provide interexchange services on a presubscription basis to the former customers of TFG.

6. We conclude that special circumstances exist to justify a waiver. Without this waiver, the service of some former TFG customers might temporarily be interrupted when TFG, a failing company, ceases doing business and thereby ceases providing presubscribed service to customers who fail to respond in a timely fashion to requests for preferred carrier change authorization; those customers might also pay potentially higher casual calling rates after the discontinuance of presubscribed service. We conclude that a waiver of the Commission's carrier change rules and orders is necessary to provide a seamless transition with no disruption of service to the transferred customers.

7. We find that Zone has demonstrated that a limited waiver of the authorization and verification rules is in the public interest because it will prevent consumers from temporarily losing service or paying significantly higher rates, and because Zone has agreed to notify the affected customers as described below. Zone states that it will undertake a two-step process to notify the affected customers of the transfer. In a first letter, Zone will inform customers of the proposed transfer and assure them that no charges or rate increases will be imposed as a result of the transfer.¹³ Zone states that it will also advise the affected customers that they can choose a different preferred carrier, should they desire to do so.¹⁴ In addition, customers will be given a toll-free number to call with any questions they may have about the transition. According to

¹⁰ *WAIT Radio*, 418 F.2d at 1157.

¹¹ *WAIT Radio*, 418 F.2d at 1159; *Northeast Cellular*, 897 F.2d at 1166.

¹² Waiver Petition at 2-3.

¹³ Zone filed sample notification letters. See Waiver Petition, Attachment B; Supplement, Attachment (Notification Letters); Waiver Petition at 4.

¹⁴ Waiver Petition at 4.

Zone, once the proposed transfer has been consummated, Zone will notify these customers of that event and reiterate the foregoing information, assurances, and advice.¹⁵ Zone has agreed that, if the Commission waives its rules to permit Zone to provide service to TFG's former customers, Zone will work with the complainants and the Commission to investigate and resolve any outstanding customer complaints regarding services provided by TFG.¹⁶ We conclude that these conditions will adequately protect the rights of the transferred customers of TFG.

8. We note that TFG, the carrier selling its customer base in this instance, has a history of delinquency in its contributions to the Universal Service Fund. Carriers pay into the Fund in order to provide financial support for various programs, including the High Cost, Schools and Libraries, and Rural Health Care programs. These programs were established by the Commission under Section 254 of the Communication Act of 1934, as amended, and are administered by the Universal Service Administration Company, in order to ensure the delivery of affordable telecommunications service to all Americans.¹⁷ While we recognize the undue burden that delinquent carriers like TFG put on the Universal Service Fund, we believe that transferring TFG's customer base to Zone, a responsible carrier contributing to the Fund as required under the Commission's rules, would be in the public interest.

9. For the foregoing reasons, we grant Zone a waiver of the authorization and verification requirements of our rules for the limited purposes described above. The grant of this waiver is conditioned upon Zone's provision of customer notification and handling of customer complaints, as described above and further detailed in the Waiver Petition and Supplement.

¹⁵ Notification Letters; Waiver Petition at 4.

¹⁶ Waiver Petition at 2.

¹⁷ See, e.g., *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776 (1997), as corrected by *Federal-State Joint Board on Universal Service, Errata*, CC Docket No. 96-45, FCC 97-157 (rel. June 4, 1997), *affirmed, reversed, and remanded in part sub nom. Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999) *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (*Universal Service Order*).

III. ORDERING CLAUSES

10. Accordingly, pursuant to authority contained in Sections 1, 4, and 258 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154, 258, and the authority delegated under sections 0.91, 0.291, and 1.3 of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, 1.3, the emergency waiver request filed by Zone Telecom, Inc. on August 7, 2000, and supplemented on August 9, 2000, IS GRANTED to the extent indicated herein.

11. IT IS FURTHER ORDERED that this Order is effective upon release.

FEDERAL COMMUNICATIONS COMMISSION

K. Michele Walters

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